No. 5713

United States Circuit Court of Appeals

For the Ninth Circuit

GEORGE P. CLARK, Trustee in Bankruptcy of the Estate of EDNA G. MILENS,

Appellant,

vs.

EDNA G. MILENS,

Appellee.

Brief of Appellee

Upon Appeal from the United States District Court for the District of Oregon.

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State of Oregon,)
) ss.
County of Multnomah)

I hereby certify that the foregoing is a true and correct copy of the original thereof.

James H. McMenamin

Of counsel for Appellee.

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Brief of Appellee

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STATEMENT OF THE CASE

Appellee believes it necessary to inform the court that this cause was once before appealed to this court in case entitled No. 5500, United States Circuit Court of Appeals, for the Ninth Circuit, George P. Clark, Trustee in Bankruptcy of the Estate of Edna G. Milens, Appellant, vs. Edna G. Milens, Appellee.

The appeal in case No. 5500 resulted in an opinion filed October 8, 1928, reversing the Dist-

rict Court of the United States for the District of Oregon and upon which a mandate was filed on the 8th day of November, 1928, over the Signature of Paul P. O'Brion, clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the transcript of Record herein, prepared and filed by appellant, there are set out copies of Record involved, in part, in this cause, to-wit:

	Trans.
Order requiring Edna G. Milens to turn over to her trustee assets unaccounted for to such trustee	1
Order Dismissing Contempt Proceedings	2
Mandate	3
Citation requiring Edna G. Milens to Appear and show cause why she should not be punished for contempt	6
Answer to citation	8
Motion to strike out answer to citation	14
Opinion	16
Order dismissing citation proceedings with prejudice	19
Certificate of U. S. District Court to transcript	20
Petition for order allowing appeal from the order made by the District Court of the United States for the District of Oregon purging Edna G. Milens of contempt	21
Assignments of Error	24
Order allowing appeal without Bond	27
Citation on appeal	28

Hence, Appellee does not deem it of any good purpose to again re-write such records verbatum herein.

Appellant, in his brief, predicates his appeal in this cause upon alleged errors of the Honorable District Judge, Robert S. Bean, in dismissing contempt proceedings instituted against the bankrupt herein, Edna G. Milens, and purging her of contempt.

Under the head of "Specifications of Errors," as shown on page nine (9) of appellants brief, it is claimed, in substance, as error on the part of the trial court:

THE FIRST ERROR ALLEGED, is, the failure of the District Court of the United States for the District of Oregon to make and enter an order upon the citation dated December 11, 1928, requiring Edna G. Milens, bankrupt, to appear and show cause why she should not be punished for contempt as provided in the opinion of the United States Circuit Court of Appeals for the Ninth District filed in said court in the cause on the 8th day of October, 1928, which said opinion reversed the order of the District Court of the United States for the District of Oregon dated April 28, 1928, purging the bankrupt of contempt, and, upon which opinion of the United States Circuit Court of Appeals for the Ninth Circuit, a mandate was entered and filed and spread upon the records of the District Court of the United States for the District of Oregon on the 16th day of November, 1928.

THE SECOND ERROR ALLEGED is the making and entering of an order by the District Court of the United States for the District of Oregon

dismissing, with prejudice, the contempt proceedings against the bankrupt, Edna G. Milens, without any testimony on behalf of Edna G. Milens, bankrupt, showing the disposition or disappearance of the sum of $5377.37 which sum the Referee in Bankruputcy found she had in her possession on the 22nd day of July, 1927, and which sum said bankrupt was fraudulently and wilfully concealing from her trustee upon which findings an order dated July 22, 1927, by the referee, was entered, requiring said Edna G. Milens, Bankrupt, to turn over said sum of $5377.37 then in her possession and wilfully and fraudulently concealed by her from George P. Clark, her trustee in bankruptcy and which findings and order has never been reviewed, appealed, vacated, modified or reversed.

In discussing these alleged errors, it seems to the appellee that there is but one question involved, to-wit: Whether or not the decision in a contempt proceeding is final, when such proceeding is had and a decision rendered before the court of whom the defendant is alleged to have been in contempt.

Appellee submits that the appellant has not in his brief in this appeal, nor has he in any of the proceedings heretofore had in this action, squarely met the issue. He has at all times predicated the duty of a United Sates District Court Justice, upon an order made by a referee in bankruptcy in reference to the duties of a bankrupt person; he has at all times ignored and refused to recog-

nize the decision of such a District Court Judge, which decision was based upon findings of fact; he would compel and make mandatory upon such a Judge, a decision which said Judge believes contrary to the facts of the case and contrary to his better judgment, all because the Referee in Bankruptcy has found that the appellee Milens in this action is in alleged possession of a certain sum of money. In other words the appellant herein would tie the hands of the District Court and prohibit it from investigating facts or drawing such conclusions, as such court deemed meet and just.

Under such a theory, it has been contended by counsel for appellant that the bankrupt was conclusively guilty of contempt of court. On the other hand, it is the contention of the appellee that the District Court itself is the sole judge of whether or not is has been held in contempt—not the referee in bankruptcy—not the attorneys for the appellant—and, if Appellee may be permitted to state, not even an appellate court.

It follows then that a court could not, in good conscience, adjudge contempt proceedings without having some knowledge of the facts upon which the proceedings were based—to act otherwise would be to blindfold justice and any decision made under such circumstances could be nothing more than a judicial guess. Apellee admits that the authority upon this point is somewhat in conflict, but believes that the question was very well summarized by the Honorable R. S. Bean, District

Judge of the United States District Court for the District of Oregon, before whom said cause was heard, in his oral opinion after the first hearing of this case, wherein, among other things, he said as follows:

"Now there is a decided conflict in the authorities as to how far, if at all, the Court in a proceeding for contempt for failure to comply with the terms of the order, may go behind the findings of the Referee and examine into the merits of the case, one line of authorities holding that the Referee's findings are conclusive, and that the only question for the Court in a contempt proceeding for failure to comply therewith, is to inquire what the bankrupt has done with the property since the order of the referee, and whether she had present ability to comply with it. Another line holds that in a contempt proceeding, the court may go back of the order of the referee and examine the facts. The practice seems to have been considered more fully by the Circuit Court of Appeals of the Third Circuit than elsewhere, and the rule there is that in a contempt proceeding, there are two steps: first, the finding of the Referee that the bankrupt had possession of the property which he was ordered to turn over, and that such order is final unless reviewed and, second, a proceeding for contempt, in which the only question is whether the bankrupt is then physically able to comply with the order previously made. BUT WHATEVER THE TRUE RULE MAY BE, THE COURT MAY,

OF COURSE, EXAMINE THE FINDINGS AND ORDER OF THE REFEREE TO DETERMINE WHETHER OR NOT IT WARRANTS THE EXTRAORDINARY POWER OF PUNISHING AS FOR CONTEMPT."

Appellee is of the opinion that the latter part of Justice Bean's summary is what Justice Dietrich meant when he said:

"We are not to be understood as holding that in no conceivable case will the court be warranted in a contempt proceeding such as this, in giving consideration to conditions existing prior to or at the time the turn-over order was made. The nature and purpose of the proceeding is always to be born in mind."

Appellee submits then, that the District Court was not in error in either of the two causes alleged. A CONTEMPT PROCEEDING LIES SOLELY WITHIN THE CONSIDERATION OF THE TRIAL COURT, SOLELY WITHIN THE CONSCIENCE OF THAT COURT AND IS EXERCISED BY THAT COURT FOR THE PURPOSE OF MAINTAINING ITS DIGNITY AND EFFICIENCY. Will an appellant court find this appellee guilty of contempt on a showing of such a character as the record herein discloses, without giving her the benefit of the fact, that reasonable doubt did, or could, arise as would purge her of such a charge? Will an appellant court ignore the fact that such a doubt may have arisen in the mind of the District Judge, who in a second hearing duly had, whereat said appellee was sworn and testified, observed the

witness upon the stand, and heard her, upon oath deny that of which she was charged, and saw that denial stand uncontradicted?

Therefore, since the contempt proceedings have been lawfully determined upon fact by the sound discretion of the District Court, this action and appeal can amount to nothing but an attempted collection of a debt and for that reason also, among others set forth herein by appellee, should fail.

AUTHORITIES AND ARGUMENT

It is said that the power to punish for contempt of court belongs exclusively to the Court offended to judge of contempt and what constitutes contempt. As was said in case of *Oregon vs. McKinnon*, 8 Oregon, page 487,

> "While every court and every judicial officer is, under our code, invested with authority to investigate charges of contempt arising from disobedience to it or his lawful judgments, or orders, in the manner provided by the code, and punish those found guilty, it does not follow as a logical necessary consequence that either without express statutory authority can take cognizance of such offenses against the dignity or authority of the other."

In an action in a state court to release a defendant who had been committed for contempt in a United States District Court the Pennsylvania court said:

> "Does anyone doubt the jurisdiction of the District Court to punish for contempt? Certainly not. All courts have this power and

> must necessarily have it; otherwise they could not protect themselves from insult, or enforce obedience in their process. Without it they would be utterly powerless. THE AUTHORITY TO DEAL WITH AN OFFENDER OF THIS CLASS BELONGS EXCLUSIVELY TO THE COURT IN WHICH THE OFFENSE IS COMMITTED, AND NO OTHER COURT, NOT EVEN THE HIGHEST, CAN INTERFERE WITH ITS EXERCISE, EITHER BY WRIT OF ERROR, MANDAMUS, OR HABEAS CORPUS."

Passmore Williamsen's Case. 26 Pa. 18.

Appellee calls the attention of the Court to the rule as to conclusiveness of the findings of a lower court in contempt proceedings stated by Justice Story in Ex Parte Kearney, 7 Wheaton, 37, wherein it was held that in Habeas Corpus proceedings to release Kearney from prison, he having been committed for contempt for having refused to answer a question as a witness, that the findings of a lower court in contempt proceedings were conclusive. In this opinion Story quoted Justice Blackstone as follows:

> "All courts, by which I mean to include the two houses of Parliament, and the courts of Westminster Hall, can have no control in the matter of contempt. The sole adjudication of contempt and the punishment thereof, belongs exclusively and without interfering, to each respective court."

And appellee further contends that no other court or judge can or ought to undertake in a collateral way, to question or review an adjudi-

cation of a contempt made by another court of competent jurisdiction. The following California case is peculiarly in point as upholding the decision of Judge Bean purging the Appellee of contempt in this cause. In the case of *The Seventy Six Land and Water Company, petitioner vs. The Superior Court of Fresno County, respondent,* 93 Cal. 129, the Honorable Justice De Haven said:

"IT WILL BE CONCLUSIVELY PRESUMED UPON APPEAL FROM A JUDGMENT PUNISHING A CONTEMPT THAT THE TRIAL COURT HAVING JURISDICTION IN THE PROCEEDINGS PROPERLY CONSIDERED ALL MATTERS OFFERED BY THE PARTIES IN CONTEMPT, IN DEFENSE OR EXTENUATION, OR SHOWING HIS GOOD FAITH, AND ITS JUDGMENT IS CONCLUSIVE AND MUST BE AFFIRMED."

In some jurisdictions the law is so firmly established on the question that an appeal will not even be allowed; thus it was held in *Cossart vs. State,* 14 Ark. 538: "Whatever may be the remedy, where the inferior court, in punishing for contempts, shall exceed its lawful authority or jurisdiction, there is none, according to existing law, by writ of error or appeal."

Again in the case of *People of the Territory of Utah, Respondent vs. Evan R. Owens, Appellant,* 8 Utah, 20, where the defendant was arrested for an attachment for contempt, and from the order appealed, the Appellate court opined as follows:

"WE THINK WE CANNOT REVIEW A PROCEEDING IN CONTEMPT WHEN THE COURT BELOW HAD JURISDICTION. THERE IS NOTHING IN OUR STATUTES ALLOWING AN APPEAL IN SUCH CASES, AND THE RULE OF LAW IS THAT EACH COURT JUDGES FOR ITSELF IN CASES OF CONTEMPT, AND THE JUDGMENT OF THE COURT IS NOT A SUBJECT OF REVIEW BY AN APPELLATE COURT."

It was also held in the case of the *State vs. Tipton,* 1 Blackford, 166, "The adjudication of a court of a competent jurisdiction respecting contempts, is not subject to the review of any other court."

While the above cases were appealed from a conviction, and which fact Appellee is fully aware of, yet it must follow that if the judgment of the lower is conclusive upon a conviction, it must also be conclusive where the judgment has purged the defendant of the act. In other words, it is the further contention of the Appellee that the District Court in the case at bar has, and had, authority to inquire whether its orders had been disobeyed, and finding they had been, to enter the order of punishment, and, by the same force of reason, to acquit a person charged with contempt after hearing is had on such contempt charges. And its findings as to the act are not open to review on Habeas Corpus even. This was so held in In Re Debs, 158 U. S. 564, where Mr. Justice Brewer said: "The circuit court, having full jurisdiction

in the premises, its findings of fact of disobedience is not open to review on habeas corpus in this or any other court."

Appellee further contends that a proceeding for contempt is regarded as a distinct and independent suit, and a collateral matter. Ex Parte Langdon, 25 Vt. 680. "A proceeding for contempt must be regarded as a distinct and independent matter, as much as a new suit and that it required distinct notice as much as a new suit."

It follows then that since the contempt proceeding is a collateral and independent matter, that it is within the province of the court before whom the contempt proceedings are heard to investigate the matters and circumstances surrounding the proceedings. This proposition was upheld by the following authorities:

> "In a proceeding to punish a bankrupt for failure or refusal to obey an order of the referee requiring him to surrender to his trustee property alleged to be in his possession and to constitute assets of his estate in bankruptcy, the order of the referee is not conclusive as to the existence of the facts which would justify it, or as to the ability of the bankrupt to comply."
>
> *In Re Haring* (D. C. Michigan 1912).
> 193 Fed. 168, Am. Bky. Rep. 285.

> "In a proceeding to commit a bankrupt for contempt for refusing to obey an order to turn property over to the trustee, the judge must

examine for himself all the evidence in regard to the bankrupt's conduct, and all other relevant evidence before and since the referee's order."

In Re Elias (D. C. N. C. 1917).
249 Fed. 448.

"On a hearing before the district judge on an order to show cause why a bankrupt should not be committed for contempt for refusing to obey a lawful order of the referee to turn certain property over to the trustee, the judge is not bound by the referee's finding that the bankrupt had the property in his possession or under his control."

In Re Elias, supra.

"Because of the drastic character and the summary procedure in contempt cases, the law requires the court to find the facts upon which orders for imprisonment for contempt are made."

In Re Elias, supra.

Appellee further contends that contempt is: "A wilful disregard or disobedience of a public authority" Dovier's Law Dictionary. That therefore the offense is substantially criminal and the power to punish is vested alone in the court whose judicial authority is challenged.

See Ex Parte Bradley, 7 Wall. 364. In this case the Supreme Court of the District of Columbia disbarred Bradley, an attorney at law, for contempt of the criminal court. Mr. Justice Nelson in his opinion said:

> "The judges of the court below exceeded their authority in punishing the relator for a contempt of that court on account of contemptuous conduct and language before the criminal court of the District or in the presence of the judge of the same."

Again in *Kirk vs. Milwaukee Dust Collector Manufacturing Company,* 26 Fed. 501, the court said:

> "IT IS A GENERAL AND ELEMENTARY PRINCIPLE THAT THE COURT ALONE IN WHICH A CONTEMPT IS COMMITTED HAS POWER TO PUNISH IT OR TO ENTERTAIN PROCEEDINGS TO THAT END."

In accord is the case of In Re Lichfield, 13 Fed. 863. "Clearly one court cannot punish a contempt against the authority of another."

The above cases are cited in behalf of Appellee's contention that the judgment of the District Court in the instant case, purging the appellee, is final, and not subject to review or reversal by the Circuit Court of Appeals. The United States Supreme Court has passed upon this question in the case of Hayes V. Fischer, 102 U. S. 121, 26 L. Ed. 95. That case was an action for violation of an injunction. The lower court found the Defendant in contempt and imposed a fine, which decision was appealed from. Chief Justice Waite ruled as follows:

> "If the proceeding below, being for contempt, was independent of and separate from

the original suit, it cannot be re-examined here either by writ of error or appeal."

And it was held in *King vs. Worten,* 54 Fed. 612, that the case was clearly a contempt proceeding and therefore not appealable.

It is contended for counsel for appellant that the present hearing is substantially the same as a former hearing had between these parties upon appeal. George P. Clark, Trustee in Bankruptcy of the Estate of Edna G Milens, Appellant, vs. Edna G. Milens, Appellee, Federal Case No. 5500. APPELLEE SUBMITS THAT THE FACTS OF THE PRESENT HEARING ARE NOT THE SAME AS THEY WERE IN THE PREVIOUS APPEAL. Since that time, to-wit, on January 2, 1929, a hearing was had on a petition submitted praying for an order to punish the bankrupt for contempt. At that time and before The Honorable R. S. Bean, District Judge, the bankrupt personally appeared upon the stand, testified upon oath before the court and was questioned by him. That testimony stood and now stands uncontradicted. Judge Bean then purged the bankrupt of contempt in an oral opinion, of which the following is a true and correct copy, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

In the Matter of

Edna G. Milens, Bankrupt.

Portland, Oregon, January 2, 1929.

R. S. BEAN, District Judge: (Oral)

This matter was submitted on a petition to punish the bankrupt for contempt. It seems that in June, 1927, the Referee, after a hearing, found that the bankrupt had in her possession the sum of $5,000 in money belonging to the estate, and made an order directing her to pay it over to the Trustee. No attempt was made to have this order refuted or set aside, and in due time the Referee reported the facts to the court and recommended that the bankrupt be proceeded against for a contempt. The usual case order was made, in obedience to which the bankrupt appeared and answered that she was unable to comply with the order, and the court, without taking any testimony, dismissed the proceedings. Upon appeal it was held that the order of the Referee was conclusive and operated as an estoppel and remanded the case for such further proceedings as might be proper not inconsistent with the opinion, and the question is again before the Court.

On the present hearing the bankrupt appeared, testified as a witness under oath that she did not have any money belonging to the estate at the time the Referee's order was made or since, and that she has not now any money or property with which to make the payment, and is wholly unable to do so. This evidence is uncontradicted and unimpeached, but notwithstanding the trustee insists that the bankrupt should be committed for contempt. For the purpose of this proceeding

the findings of the Referee are conclusive upon the parties and a judicial estoppel. It may be that the bankrupt's admission that she has not complied with the order makes out a prima facie case for contempt from which she can only purge herself by showing that for sufficient reason she is now unable to obey the order. The burden is upon her to do so, but as stated by the Court of Appeals in the instance case, the coercive measure is applied only when and so long as the defendant is able to obey.

The question therefore I take it is whether the bankrupt is at present able to comply with the order, or in other words, whether her failure is wilful or unavoidable, and the court must be satisfied beyond peradventure of her contumacy before it is justified in committing her for contempt. In some cases it is said the court must be satisfied beyond reasonable doubt of the person's ability to comply with the order. Such was the holding of Judge Brewster in a recent case in Massachusetts reported in the Bankruptcy Reports.

It is argued that because the Referee found that the bankrupt had in her possession the money at the time of the adjudication, and that order stands unreversed or unmodified it must be assumed conclusively that she had the money at the time the order was made, and that she can purge herself from contempt only by showing what disposition she has made of the money, whether in fact she had it or not, or regardless of her present ability to comply with the order, but I do not so understand the law. A committment for contempt is an extraordinary remedy and should be resorted to only when the court is satisfied of

the defendant's present ability to comply with the order. The futility and injustice of depriving an individual of his liberty for failing to do the impossible suggests such a conclusion. No person should be imprisoned for contempt for failing to obey an order to pay over money when his inability to comply therewith conclusively appears. To commit the defendant now for contempt would be a useless proceeding because she could return into court at any time and purge herself by showing that she was unable to comply with the order, and therefore I take it that the petition should be dismissed.

I, Mary E. Bell, hereby certify that I acted as official stenographer in the foregoing court at the time the above opinion was rendered; that I took down the same in shorthand, and that the foregoing three pages contain a full, true and correct transcript thereof.

(Signed) MARY E. BELL,
Notary Public for Oregon.

My commission expires Feb. 21, 1929.
(SEAL)

In view of that hearing and the oral opinion of Judge Bean thereon, Appellee believes that there has been a reasonable showing that the ruling of Judge Bean purging the bankrupt appellee of contempt should stand and that the statement of Judge Dietrich, Circuit Judge, in the former hearing in which he said "But we need not speculate upon what might be a reasonable showing, for here it is not contended that upon a hearing the lower court was convinced that the bankrupt

was without the present ability to obey. She offered no evidence at all," has been answered.

The appellee further contends that in view of the second hearing duly had before the district court, the present case assumes the status of the situation which Justice Dietrich had in mind in his former opinion when he said:

> "We are not to be understood as holding that in no conceivable case will the court be warranted in a contempt proceeding such as this, in giving consideration to conditions existing prior to or at the time the turn-over order was made. The nature and purpose of the proceeding is always to be borne in mind."
>
> *George P. Clark, Trustee in Bky. of Edna G. Milens, Bkt., Plaintiff vs. Edna G. Milens, Defendant.*

SUMMARY

Appellee contends:

First, that the bankrupt has purged herself by her uncontradicted testimony before the District Court on the hearing had January 2, 1929.

Second, The court in which the contempt is alleged to have been committed, and the Judge thereof, is a forum in which this matter shall be, and has been, tried and the Judge of that Court really sits in the same status as a jury in a criminal case and that he has the exclusive authority to determine the matter of whether or not the elements necessary to constitute the criminal con-

tempt existed at the time of the hearing. Appellee further contends that no other Court who was not present at the trial, and did not meet the party proceeded against face to face possesses the power or authority to again pass upon the case as a substitute for the trial Judge who sat at the hearing in the contempt matter, and, therefore, pronounce the punishment to be inflicted. Appellee contends that the hearing of the contempt was a matter peculiarly and exclusively placed in the bosom of the trial Court, who had the inherent and exclusive right and discretion to determine the matter and that the determination of said trial Court purging appellee of contempt is not now subject to review.

As for the contention of counsel for Appellant. They, notwithstanding the law that the decision of Justice Bean in this matter is conclusive, notwithstanding that Justice Bean has twice exercised his judicial prerogative and purged this Appellee of the crime of contempt, and notwithstanding the fact that this Appellee is not, nor has ever been able to pay this money, and in spite of the fact that counsel for appellants know that coercive measures will fail, have tenaciously clung to the assumption that since the Referee in Bankruptcy has said that the bankrupt is in the possession of certain moneys that therefore she must have it.

In spite of position and contention of counsel for Appellant in the instant case, the fact remains and has been found by the District Court, per Judge R. S. Bean, that Appellee has not the

money, and is unable, therefore, to pay. The whole situation reminds Appellee of a story of a certain tribe of natives in India, and a Scientist. These particular people would partake of nothing in the way of food that had had life in it. A scientist exploring that particular country produced a microscope and showed the people that the milk they drank was full of animate matter. Did they then cease drinking milk? No. They destroyed the microscope. Likewise is this case, in spite of the fact that that Appellee has not the money and is therefore unable to produce it, which counsel well know, they would have her committed to imprisonment, destroy the health and freedom of this bankrupt and make her a common criminal.

In the last analysis, the situation is, that regardless of whether or not the Bankruptcy court has said that the bankrupt is estopped from denying her ability to produce the alleged sum of money, yet the matter of contempt, and punishment therefor, is peculiarly within the premises of the court whose orders were alleged to have been disobeyed. That Court, The United States District Court of the State of Oregon, has heard the matter upon two occasions, and each time has purged the bankrupt of contempt. Upon one occasion this matter has been before the Circuit Court of Appeals for the Ninth District who did not pass on the matter of contempt, which is the point now at issue, but instead, ruled that the bankrupt is estopped from denying her ability to pay, which ruling was wholly

immaterial to the essence of the case.

In other words the position of the Appellee is that, having been cited for contempt before the Court whose orders she is alleged to have disobeyed and having been purged of said contempt by said court upon two hearings, duly had, that the matter is thereby terminated and it is not then nor thereafter within the province of a higher court to reverse the findings of the lower court.

> "It is settled, in the absence of statutory regulation, that the matter of dealing with contempts and how they should be punished are within the trial court's sound discretion, and that such discretion will not be interfered with unless it has been grossly abused."
>
> *In Re Sobel* (N. Y. 1927).
> 242 Fed. 487.
> 155 C. C. A. 263.

Appellee leaves the matter to this court. Will it now say that a commitment for contempt is mandatory upon The Honorable Justice Bean, and thereby infer that he has grossly abused his discretion?

Respectfully submitted,

T. J. Cleeton,
Jas. H. McMenamin,
Willis A. Potter,
Counsel for Appellee.